



DNOTE
State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3121/P+ PS

JTK: [signature]

Wanted Tue 10/21 8:30AM

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAV
new CRs ✓
X-refs ✓

CS

Ref cont

1 AN ACT *to repeal* 108.225 (1) (d); *to amend* 20.445 (1) (n), 108.02 (12) (b) (intro.),
2 108.02 (12) (bm) (intro.), 108.04 (2) (a) 3., 108.04 (11) (cm), 108.04 (16) (a)
3 (intro.), (b) and (c), 108.04 (17) (a) 1. and 2., (b) 1. and 2., (c) 1. and 2., (d), (e),
4 (f), (g), (h), (i) and (k) (intro.), 108.05 (7) (a) 1., 108.05 (7) (c), 108.05 (7) (d) 1.
5 (intro.), 108.05 (7) (f) (intro.), 108.09 (4) (c), 108.14 (8s) (a) and (b), 108.161 (4)
6 (c), 108.22 (2) (b), 108.22 (8) (b), 108.225 (15) and 108.225 (16) (a); *to create*
7 20.445 (1) (ne), 108.02 (6m), 108.05 (7) (cm), 108.16 (12) and 108.225 (16m) of
8 the statutes; and *to affect* 2001 Wisconsin Act 35, section 72 (2) (a) 2. and 3.;
9 **relating to:** various changes in the unemployment insurance law.

Analysis by the Legislative Reference Bureau

This bill makes various changes in the unemployment insurance law. Significant provisions include:

BENEFIT CHANGES

Employee status

Currently, in order to be eligible to claim benefits, an individual must, in addition to other requirements, be an "employee" as defined in the unemployment insurance law. Generally, an "employee" is an individual who performs services for

an employer in employment covered under the unemployment insurance law, whether or not the individual is directly paid by the employer. However, an individual is not an “employee” if the individual performs services as an independent contractor.

Currently, during the four-year period beginning in the year 2000 (the specific date varies in different situations), an independent contractor, other than a logger or trucker performing services for an employer other than a governmental or nonprofit employer, must meet at least seven of ten conditions concerning the individual’s relationship to or control over his or her business or the services that he or she performs. Two of the conditions that an individual may use to qualify as an independent contractor require the individual to have a federal employer identification number or to have filed business or self-employment income tax returns with the federal internal revenue service based on the services performed as an independent contractor. The other eight conditions are the same eight conditions that an individual was able to use to qualify as an independent contractor prior to the year 2000. These conditions relate to the individual’s relationship to or direction or control over his or her business or the services that he or she performs.

Beginning in 2004, in order to be considered an independent contractor, an individual must hold or have applied for an employer identification number with the federal internal revenue service or must have filed business or self-employment income tax returns with the federal internal revenue service in the previous year, and must meet at least six of the eight other conditions concerning the individual’s relationship to or direction or control over his or her business or the services that he or she performs. This bill makes permanent the test for determination of “employee” status that is in effect prior to 2004.

Approved training

Currently, benefits may not be denied to an otherwise eligible claimant because the claimant is enrolled in a vocational training course under certain conditions. This bill provides that this exception does not apply to a claimant who fails to provide to the Department of Workforce Development (DWD) with his or her social security number or who provides a false social security number. Current law also provides that a claimant is not subject to certain requirements to requalify for benefits by obtaining new work after voluntarily terminating work or failing, without good cause, to accept suitable work or recall to work for a former employer if the failure occurs as a result of participation in a federal training program or the claimant leaves work to enter or continue in such a program. This bill provides that this exemption does not apply to a claimant who fails to provide a social security number or who provides a false social security number. However, the bill extends the current exemption so that a claimant who participates in such a program is not subject to requirements to be able to work and remain available for work, and makes such a claimant exempt from disqualifications or benefit reductions for taking a voluntary leave of absence from work, working in self-employment, failing to maintain a license, being employed by a family-owned business, or failing to provide certain information. However, the bill limits the current exemption so that it applies only to dislocated workers and workers obtaining training under the federal Trade

Adjustment Assistance Act, rather than to all workers, who participate in certain federal training programs.

Search for work

Currently, in In order to remain eligible to receive benefits for a week in which a claimant receives no benefits, a claimant is required, among other things, to *seek* ~~conduct a~~ reasonable search for suitable work within that week. *ea. a wage*

In S 3A This bill provides that this requirement does not apply if DWD determines that the claimant was most recently employed by an employer that has previously recalled the claimant to a job that is substantially in line with the claimant's prior job skill and rate of pay during one or more layoffs and that the employer is reasonably likely to recall the claimant to such a job within a reasonable period during the current layoff.

Exemption of wages from levies

Currently, DWD may administratively levy against property held by a third party who holds the property of a person who is indebted to DWD for the purpose of enforcing collection of the debt. If the levy is to collect a benefit overpayment or a forfeiture (civil penalty) imposed upon an employer, an individual debtor is entitled to an exemption of the greater of: 1) 75 percent of the debtor's earnings (excluding amounts withheld by law, insurance premiums, union dues, child support payments, and prior garnishments) then due and owing; or 2) an amount equal to 30 times the federal minimum wage per week or a proportionate amount for any partial week of earnings received.

keep comma This bill provides instead that 80 percent of the debtor's earnings (excluding deductions for social security and federal and state income taxes) are exempt from levy unless (1) the debtor's household income (including unearned income and the income of dependents but excluding family support payments) is below the federal poverty line or the levy would cause that result, or 2) the debtor receives or within six months prior to service of the levy received need-based public assistance or has been determined to be eligible for such assistance, in which case the debtor's earnings are totally exempt from levy. *My bill also provides that no exemption applies if there is an unresolved adjudication that the debtor made a false statement or representation in order to obtain benefits.*

Recovery of benefit overpayments Currently, DWD may offset any benefits that are overpaid to a claimant against benefits that the claimant would otherwise be eligible to receive. This bill provides for DWD to recoup any overpayment instead of offsetting it. The change facilitates collection of overpayments during bankruptcy proceedings.

TAX CHANGES

Duration of levies

Currently, an administrative levy applies for more than one year after the date of service. This bill removes that limitation. Under the bill, a levy is effective until the debt is satisfied or until DWD releases the levy, whichever occurs first.

Enforcement of assessments against imposters

Currently, if any person makes a false statement or representation in order to obtain benefits in the name of another person, DWD may, by administrative action or by decision in an administrative proceeding, require the person to repay the

benefits and may also penalize the person by levying an assessment against him or her in an amount not greater than 50 percent of the benefits wrongfully obtained. The assessment may be enforced by obtaining a judgment against the person in court and then by levying against the nonexempt property of the person to enforce the judgment. This bill provides, in addition, that DWD may recoup the amount due from other benefits that the person would otherwise be eligible to receive or may issue an administrative levy against the property of the person without a court proceeding.

OTHER CHANGES

Treatment of stepchildren

Currently, stepchildren are not treated as children for purposes of the unemployment insurance law. This bill treats stepchildren as children for that purpose. Among other effects, the change means that: a) unless an employer otherwise elects, with the approval of DWD, the wages of the stepchildren of a nonresident alien who has nonimmigrant status are not subject to contribution requirements (taxes) and these stepchildren may not claim benefits based on their employment; b) ownership of a business by the stepchild of a claimant may result in a limitation of benefit availability based on employment with that business; c) the need to obtain child care for a stepchild or domestic abuse involving a stepchild may serve to permit a claimant to obtain benefits after voluntarily terminating work without requalifying by engaging in new work, under certain conditions; and d) ownership of a business by a stepchild of another owner may result in treatment of the business as the successor of the previous business rather than treatment of the business as a new business, under certain conditions.

Rule making

2001 Wisconsin Act 35 directed DWD to submit proposed rule changes to the legislative council staff no later than December 1, 2002, to:

1. Establish a specified level of repeated absenteeism or repeated tardiness that will permit an employer to terminate an employee without being required to pay the cost of any benefits for which the employee may qualify resulting from the base period applicable to the date of termination, and that will preclude the employee from receiving benefits without requalifying by working for a specified period and receiving a specified amount. (Currently, the degree of absenteeism or tardiness that permits such action varies depending upon the facts of each case.)

2. Specify, in accordance with applicable administrative and judicial interpretations, what constitutes an "establishment" for purposes of a current disqualification from receipt of benefits because of a labor dispute in the establishment in which an employee is or was employed.

This bill repeals this requirement.

Late appeals

Currently, if a party in an unemployment insurance determination files an appeal that is not timely, DWD may schedule a hearing concerning whether the party's failure to file the appeal on a timely basis was for a reason that was beyond the party's control. This bill provides that if a party files an appeal that is not timely,

an appeal tribunal (attorney employed by DWD) must review the reasons given by the party for not filing a timely appeal and if those reasons, taken as true and construed most favorably to the party, do not constitute a reason that was beyond the party's control, the tribunal may dismiss the appeal without a hearing and issue a decision finding that the appeal was not filed on a timely basis. If the tribunal finds that the appeal may have been filed late for a reason that was beyond the party's control, the department may schedule a hearing on that issue.

Method of payment of certain court filing fees

Currently, DWD has a lien on the property of each employer for payment of contributions (taxes), together with any interest, fees, and forfeitures owed by the employer. DWD may issue a warrant and record the warrant with the clerk of circuit court to secure payment of the amounts due. DWD need not pay the filing fee with each warrant that is recorded, but instead pays semiannually or at another interval that is agreed to by the clerk of circuit court. This bill provides that DWD need not pay the filing fee for any satisfaction of a warrant or release or withdrawal of a warrant at the time it is recorded, but instead may pay the clerk of circuit court periodically in the same manner that fees for recording of warrants are paid currently.

Payment of banking service costs

Currently, the cost of banking services incurred by the unemployment reserve fund is paid by maintaining compensating balances in the bank accounts that are used to make daily transactions. This bill provides for the treasurer of the fund to make estimates, prior to the beginning of each calendar quarter, of the earnings that the fund could anticipate in that quarter if compensating balances are maintained to cover service costs and, alternatively, if the moneys that would otherwise be maintained in bank accounts to cover service costs were instead retained in the federal unemployment trust account and the banking service costs were paid from that account. The treasurer is directed to pay banking service costs using the method that the treasurer determines will permit the fund to realize the greatest net earnings in that quarter.

Reporting of social security benefit information

Currently, claimants and their employers and retirement systems are required to report to DWD any information specified by DWD relating to the portion of social security benefits received by a claimant that is not based upon taxes paid by a claimant. This bill makes the reporting requirement applicable to all social security benefits received.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.445 (1) (n) of the statutes, as affected by 2003 Wisconsin Act 33,
2 is amended to read:

3 20.445 (1) (n) *Employment assistance and unemployment insurance*
4 *administration; federal moneys.* All federal moneys received, as authorized by the
5 governor under s. 16.54, for the administration of employment assistance and
6 unemployment insurance programs of the department, for the performance of the
7 department's other functions under subch. I of ch. 106 and ch. 108, except moneys
8 appropriated under par. (nc), and to pay the compensation and expenses of appeal
9 tribunals and of employment councils appointed under s. 108.14, to be used for such
10 purposes, except as provided in s. 108.161 (3e), to transfer to the appropriation
11 account under par. (nb) an amount determined by the treasurer of the unemployment
12 reserve fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or
13 the amounts in the schedule under par. (nb), and to transfer to the appropriation
14 account under par. (nd) an amount determined by the treasurer of the
15 unemployment reserve fund not exceeding the lesser of the amount specified in s.
16 108.161 (4) (d) or the amounts in the schedule under par. (nd), and to transfer to the
17 appropriation account under par. (ne) an amount equal to any amount required to
18 pay for the cost of banking services incurred by the unemployment reserve fund.

19 **SECTION 2.** 20.445 (1) (ne) of the statutes is created to read:

20 20.445 (1) (ne) *Unemployment administration; bank service costs.* All moneys
21 transferred from the appropriation account under par. (n) to be used for the payment
22 of the cost of banking services incurred by the unemployment reserve fund.

23 **SECTION 3.** 108.02 (6m) of the statutes is created to read:

24 108.02 (6m) CHILD. "Child" means a natural child, adopted child, or stepchild.

25 **SECTION 4.** 108.02 (12) (b) (intro.) of the statutes is amended to read:

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1 108.02 (12) (b) (intro.) During the period beginning on January 1, 1996, and
2 ending on December 31, 1999, ~~and during the period beginning on January 1, 2004,~~
3 with respect to contribution requirements, and during the period beginning on
4 January 1, 1996, and ending on April 1, 2000, ~~and during the period beginning on~~
5 ~~April 4, 2004,~~ with respect to benefit eligibility, par. (a) does not apply to an individual
6 performing services for an employing unit other than a government unit or nonprofit
7 organization in a capacity other than as a logger or trucker, if the employing unit
8 satisfies the department that:

9 **SECTION 5.** 108.02 (12) (bm) (intro.) of the statutes is amended to read:

10 108.02 (12) (bm) (intro.) During the ~~4-year~~ period beginning on
11 January 1, 2000, with respect to contribution requirements, and during the period
12 beginning on April 2, 2000, ~~and ending on April 3, 2004,~~ with respect to benefit
13 eligibility, par. (a) does not apply to an individual performing services for an
14 employing unit other than a government unit or nonprofit organization in a capacity
15 other than as a logger or trucker, if the employing unit satisfies the department that
16 the individual meets 7 or more of the following conditions by contract and in fact:

17 **SECTION 6:** 108.04 (2) (a) 3. of the statutes is amended to read:

18 108.04 (2) (a) 3. The individual is seeking suitable work during that week or,
19 during the 156-week period beginning on January 2, 2000, the individual conducts
20 a reasonable search for suitable work during that week. The reasonable search
21 required during the period specified in this subdivision must include 2 actions that
22 constitute a reasonable search as prescribed by rule of the department. The
23 department shall, by rule, require claimants to conduct a reasonable search for
24 suitable work during the period beginning after the 156-week period specified in this
25 subdivision and shall, by rule, prescribe standards for the search to be considered

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1 reasonable. This subdivision does not apply to an individual if the department
2 determines that the individual was most recently employed by an employer that has
3 previously recalled the individual to a job that is substantially in line with the
4 individual's prior job skill and rate of pay during one or more layoffs and that the
5 same employer is reasonably likely to recall the individual to such a job within a
6 reasonable period during the current layoff.

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9
SECTION 7. 108.04 (11) (cm) of the statutes is amended to read:

108.04 (11) (cm) ~~Any~~ If any person ~~who~~ makes a false statement or
9 representation in order to obtain benefits in the name of another person, the benefits
10 received by that person constitute a benefit overpayment. Such person may, by a
11 determination or decision issued under s. 108.095, be required to repay the amount
12 of the benefits obtained and be assessed an administrative assessment in an
13 additional amount equal to not more than 50% of the amount of benefits obtained.

14 SECTION 8. 108.04 (16) (a) (intro.), (b) and (c) of the statutes are amended to
15 read:

16 108.04 (16) (a) (intro.) Benefits shall not be reduced under sub. (1) (a), or denied
17 under sub. (2) (a) or (d) or (8) or s. 108.141 (3g) to any otherwise eligible individual
18 for any week because the individual is enrolled in a full-time course of vocational
19 training or basic education which is a prerequisite to such training, provided it is
20 determined that:

21 (b) The requalifying ~~employment~~ requirement under subs. (7) and (8) and the
22 general qualifying requirements under ~~sub.~~ subs. (1) and (2) (a) and (d) do not apply
23 to an individual as a result of the individual's enrollment in training or leaving
24 unsuitable work to enter or continue training in accordance with the plan of any state

1 under 19 USC 2296 or a plan for training of dislocated workers approved under 29
2 USC 2822.

3 (c) Benefits may not be denied to an otherwise eligible individual under par. (a)
4 who is enrolled in a program under the plan of any state for training under 19 USC
5 2296 or a plan for training of dislocated workers approved under 29 USC 2822,
6 notwithstanding the failure of such training to meet any of the requirements of par.
7 (a) 1. to 4.

8 **SECTION 9.** 108.04 (17) (a) 1. and 2., (b) 1. and 2., (c) 1. and 2., (d), (e), (f), (g),
9 (h), (i) and (k) (intro.) of the statutes are amended to read:

10 108.04 (17) (a) 1. During the period between 2 successive academic years or
11 terms, if the school year employee performed such services for ~~an~~ any educational
12 institution in the first such year or term and if there is reasonable assurance that he
13 or she will perform such services for ~~an~~ any educational institution in the 2nd such
14 year or term; or

15 2. During the period between 2 regular but not successive academic terms,
16 when an agreement between an employer and a school year employee provides for
17 such a period, if the school year employee performed such services for ~~an~~ any
18 educational institution in the first such term and if there is reasonable assurance
19 that he or she will perform such services for ~~an~~ any educational institution in the 2nd
20 such term.

21 (b) 1. During the period between 2 successive academic years or terms, if the
22 school year employee performed such services for any such ~~a~~ government unit,
23 Indian tribe, or nonprofit organization in the first such year or term and if there is
24 reasonable assurance that he or she will perform such services for any such ~~a~~

1 government unit, Indian tribe, or nonprofit organization in the 2nd such year or
2 term; or

3 2. During the period between 2 regular but not successive academic terms,
4 when an agreement between an employer and a school year employee provides for
5 such a period, if the school year employee performed such services for any such ~~a~~
6 government unit, Indian tribe, or nonprofit organization in the first such term and
7 if there is reasonable assurance that he or she will perform such services for any such
8 ~~a~~ government unit, Indian tribe, or nonprofit organization in the 2nd such term.

9 (c) 1. During the period between 2 successive academic years or terms, if the
10 school year employee performed such services for ~~an~~ any educational service agency
11 in the first such year or term and if there is reasonable assurance that he or she will
12 perform such services for ~~an~~ any educational service agency in the 2nd such year or
13 term; or

14 2. During the period between 2 regular but not successive academic terms,
15 when an agreement between an employer and a school year employee provides for
16 such a period, if the school year employee performed such services for ~~an~~ any
17 educational service agency in the first such term and if there is reasonable assurance
18 that he or she will perform such services for ~~an~~ any educational service agency in the
19 2nd such term.

20 (d) A school year employee of an educational institution who performs services
21 other than in an instructional, research or principal administrative capacity is
22 ineligible for benefits based on such services for any week of unemployment which
23 occurs during a period between 2 successive academic years or terms if the school
24 year employee performed such services for ~~an~~ any educational institution in the first

1 such year or term and there is reasonable assurance that he or she will perform such
2 services for ~~an~~ any educational institution in the 2nd such year or term.

3 (e) A school year employee of a government unit, Indian tribe, or nonprofit
4 organization which provides services to or on behalf of ~~an~~ any educational institution
5 who performs services other than in an instructional, research or principal
6 administrative capacity is ineligible for benefits based on such services for any week
7 of unemployment which occurs during a period between 2 successive academic years
8 or terms if the school year employee performed such services for any such ~~a~~-
9 government unit or nonprofit organization in the first such year or term and there
10 is reasonable assurance that he or she will perform such services for any such ~~a~~-
11 government unit, Indian tribe, or nonprofit organization in the 2nd such year or
12 term.

13 (f) A school year employee of an educational service agency who performs
14 services other than in an instructional, research or principal administrative
15 capacity, and who provides such services in an educational institution or to or on
16 behalf of an educational institution, is ineligible for benefits based on such services
17 for any week of unemployment which occurs during a period between 2 successive
18 academic years or terms if the school year employee performed such services for ~~an~~
19 any educational service agency in the first such year or term and there is reasonable
20 assurance that he or she will perform such services for ~~an~~ any educational service
21 agency in the 2nd such year or term.

22 (g) A school year employee of an educational institution who performs services
23 as described in par. (a) or (d) is ineligible for benefits based on such services for any
24 week of unemployment which occurs during an established and customary vacation
25 period or holiday recess if the school year employee performed such services for ~~an~~

1 any educational institution in the period immediately before the vacation period or
2 holiday recess, and there is reasonable assurance that he or she will perform the
3 services described in par. (a) or (d) for ~~an~~ any educational institution in the period
4 immediately following the vacation period or holiday recess.

5 (h) A school year employee of a government unit, Indian tribe, or nonprofit
6 organization which provides services to or on behalf of an educational institution
7 who performs the services described in par. (b) or (e) is ineligible for benefits based
8 on such services for any week of unemployment which occurs during an established
9 and customary vacation period or holiday recess if the school year employee
10 performed such services for any such ~~a~~ government unit, Indian tribe, or nonprofit
11 organization in the period immediately before the vacation period or holiday recess,
12 and there is reasonable assurance that the school year employee will perform the
13 services described in par. (b) or (e) for any such ~~a~~ government unit, Indian tribe, or
14 nonprofit organization in the period immediately following the vacation period or
15 holiday recess.

16 (i) A school year employee of an educational service agency who performs the
17 services described in par. (c) or (f), and who provides such services in an educational
18 institution or to or on behalf of an educational institution, is ineligible for benefits
19 based on such services for any week of unemployment which occurs during an
20 established and customary vacation period or holiday recess if the school year
21 employee performed such services for ~~an~~ any educational service agency in the period
22 immediately before the vacation period or holiday recess, and there is reasonable
23 assurance that the school year employee will perform the services described in par.
24 (c) or (f) for ~~an~~ any educational service agency in the period immediately following
25 the vacation period or holiday recess.

1 (k) (intro.) If benefits are reduced or denied to a school year employee who
2 performed services other than in an instructional, research or principal
3 administrative capacity under pars. (d) to (f), and the department later determines
4 that the school year employee was not offered an opportunity to perform such
5 services for ~~the~~ an applicable employer under pars. (d) to (f) in the 2nd academic year
6 or term, the department shall recompute the school year employee's base period
7 wages under sub. (4) (a) and ss. 108.05 (1) and 108.06 (1) and shall make retroactive
8 payment of benefits for each week of such reduction or denial if the school year
9 employee:

10 SECTION 10. 108.05 (7) (a) 1. of the statutes is amended to read:

11 108.05 (7) (a) 1. "Pension payment" means a pension, retirement, annuity, or
12 other similar payment made to a claimant, based on the previous work of that
13 claimant, whether or not payable on a periodic basis, from a governmental or other
14 retirement system maintained or contributed to by an employer from which that
15 claimant has base period wages, ~~other than a payment received under the federal~~
16 ~~Social Security Act (42 USC 301 et seq.) that is based in whole or in part upon taxes~~
17 ~~paid by the claimant.~~

18 SECTION 11. 108.05 (7) (c) of the statutes is amended to read:

19 108.05 (7) (c) *Required benefit reduction.* ~~If~~ Except as provided in par. (cm), if
20 a claimant actually or constructively receives a pension payment, the department
21 shall reduce benefits otherwise payable to the claimant for a week of partial or total
22 unemployment, but not below zero, if pars. (d) and (e) or if pars. (d) and (f) apply.

23 SECTION 12. 108.05 (7) (cm) of the statutes is created to read:

24 108.05 (7) (cm) *Payments received under Social Security Act.* If a claimant
25 receives a pension payment under the federal Social Security Act (42 USC 301 et

1 seq.), the department shall not reduce the benefits otherwise payable to the claimant
2 resulting from the claimant's receipt of the portion of the pension payment that is
3 based upon taxes paid by the claimant.

4 SECTION 13. 108.05 (7) (d) 1. (intro.) of the statutes is amended to read:

5 108.05 (7) (d) 1. (intro.) If a pension payment to which par. (c) applies is not paid
6 on a weekly basis, the department shall allocate and attribute the payment to
7 specific weeks if:

8 SECTION 14. 108.05 (7) (f) (intro.) of the statutes is amended to read:

9 108.05 (7) (f) *Partial or total employee funding.* (intro.) If any portion of a
10 pension payment to which par. (c) applies that is actually or constructively received
11 by a claimant under this subsection is funded by the claimant's contributions, the
12 department shall compute the benefits payable for a week of partial or total
13 unemployment as follows:

14 SECTION 15. 108.09 (4) (c) of the statutes is amended to read:

15 108.09 (4) (c) *Late appeal.* If a party files an appeal which is not timely, an
16 appeal tribunal shall review the appellant's written reasons for filing the late appeal.
17 If those reasons, when taken as true and construed most favorably to the appellant,
18 do not constitute a reason beyond the appellant's control, the appeal tribunal may
19 dismiss the appeal without a hearing and issue a decision accordingly. Otherwise,
20 the department may schedule a hearing concerning the issue question of whether the
21 party's failure to timely file the appeal was filed late for a reason that was beyond
22 the party's appellant's control. The department may also provisionally schedule a
23 hearing concerning any matter in the determination. ~~If, after hearing testimony, the~~
24 ~~appeal tribunal finds that the party's failure to timely file the appeal was not for a~~
25 ~~reason beyond the party's control, the appeal tribunal shall issue a decision~~

1 ~~containing this finding and dismissing the appeal. If, after hearing testimony, the~~
2 ~~appeal tribunal finds that the party's failure to timely file an appeal was for a reason~~
3 ~~beyond the party's control, the appeal tribunal shall issue a decision containing this~~
4 ~~finding. The being appealed. After hearing testimony on the late appeal question,~~
5 ~~the appeal tribunal shall issue a decision which makes ultimate findings of fact and~~
6 ~~conclusions of law concerning whether the the appellant's appeal was filed late for~~
7 ~~a reason that was beyond the appellant's control and which, in accordance with those~~
8 ~~findings and conclusions, either dismisses the appeal or determines that the appeal~~
9 ~~was filed late for a reason that was beyond the appellant's control. If the appeal is~~
10 ~~not dismissed, the same or another appeal tribunal established by the department~~
11 ~~for this purpose, after conducting a hearing, shall then issue a decision under sub.~~
12 (3) (b) ~~after conducting a hearing~~ concerning any matter in the determination.

13 **SECTION 16.** 108.14 (8s) (a) and (b) of the statutes are amended to read:

14 108.14 (8s) (a) Overpayments of unemployment insurance benefits as
15 determined under this chapter may be ~~recovered by offset~~ recouped from
16 unemployment insurance benefits otherwise payable under the unemployment
17 insurance law of another state, and overpayments of unemployment insurance
18 benefits as determined under the unemployment insurance law of that other state
19 may be ~~recovered by offset~~ recouped from unemployment insurance benefits
20 otherwise payable under this chapter; and

21 (b) Overpayments of unemployment insurance benefits as determined under
22 applicable federal law, with respect to benefits or allowances for unemployment
23 provided under a federal program administered by this state under an agreement
24 with the U.S. secretary of labor, may be ~~recovered by offset~~ recouped from
25 unemployment insurance benefits otherwise payable under that program, or under

1 the unemployment insurance law of this state or of another state or any such federal
2 unemployment benefit or allowance program administered by the other state under
3 an agreement with the U.S. secretary of labor if the other state has in effect a
4 reciprocal agreement with the U.S. secretary of labor as authorized by 42 USC 503
5 (g) (2), if the United States agrees, as provided in the reciprocal agreement with this
6 state entered into under 42 USC 503 (g) (2), that overpayments of unemployment
7 insurance benefits as determined under this chapter, and overpayments as
8 determined under the unemployment insurance law of another state which has in
9 effect a reciprocal agreement with the U.S. secretary of labor as authorized by 42
10 USC 503 (g) (2), may be ~~recovered by offset~~ recouped from benefits or allowances for
11 unemployment otherwise payable under a federal program administered by this
12 state or the other state under an agreement with the U.S. secretary of labor.

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13 **SECTION 17.** 108.16 (12) of the statutes is created to read:

14 108.16 (12) The fund's treasurer shall estimate at the end of each calendar
15 quarter the earnings rate payable on the fund's bank balances and the earnings rate
16 payable by the federal unemployment account under title XII of the Social Security
17 Act (42 USC 1321 to 1324) for the following quarter. Based on these estimates, the
18 treasurer shall pay for the cost of banking services incurred by the fund in the
19 following quarter either by maintaining compensating bank balances or by payment
20 for the services from the appropriation under s. 20.445 (1) (ne), whichever payment
21 method is estimated to yield the highest net earnings for the fund.

22 **SECTION 18.** 108.161 (4) (c) of the statutes, as affected by 2003 Wisconsin Act
23 33, is amended to read:

24 108.161 (4) (c) Specifying that the appropriated amounts are available for
25 obligation solely within the 2 years beginning on the appropriation law's date of

1 enactment. This paragraph does not apply to the ~~appropriation~~ appropriations
2 under s. 20.445 (1) (nd) and (ne).

3 SECTION 19. 108.22 (2) (b) of the statutes is amended to read:

4 108.22 (2) (b) The clerk of circuit court shall accept, file and enter the each
5 warrant under par. (a) and each satisfaction, release, or withdrawal under subs. (5),
6 (6), and (8m) in the judgment and lien docket without prepayment of any fee, but the
7 clerk of circuit court shall submit a statement of the proper fee semiannually to the
8 department covering the periods from January 1 to June 30 and July 1 to December
9 31 unless a different billing period is agreed to between the clerk of circuit court and
10 the department. The fees shall then be paid by the department, but the fees provided
11 by s. 814.61 (5) for entering the warrants shall be added to the amount of the warrant
12 and collected from the employing unit when satisfaction or release is presented for
13 entry.

14 SECTION 20. 108.22 (8) (b) of the statutes is amended to read:

15 108.22 (8) (b) To recover any overpayment which is not otherwise repaid or
16 or any assessment under s. 108.04 (11) (cm) 5 recovery of which has not been waived, the department may ~~offset~~ recoup the amount
17 of the overpayment ~~against from~~ benefits the individual would otherwise be eligible
18 to receive, or file a warrant against the liable individual in the same manner as is
19 provided in this section for collecting delinquent payments from employers, or both,
20 but only to the extent of recovering the actual amount of the overpayment and any
21 costs and disbursements, without interest.

22 SECTION 21. 108.225 (1) (d) of the statutes is repealed.

23 SECTION 22. 108.225 (15) of the statutes is amended to read:

24 108.225 (15) DURATION OF LEVY. A levy is effective from the date on which the
25 levy is first served on the 3rd party until the liability out of which the levy arose is

108.225 (16) (intro.) (except 108.225 (16) (title))
is renumbered 108.225 (16) (a) (intro.).

1 satisfied, or until the levy is released or until one year from the date of service,
2 whichever occurs first.

3 Sec now H. 108.225 (16) (intro.); 108.225 (16) (a) (intro.)

4 **SECTION 23.** 108.225 (16) (a) of the statutes is amended to read:

5 108.225 (16) (a) A subsistence allowance of 75% of the debtor's disposable
6 earnings then due and owing equal to the amount that the debtor could claim as

7 exempt under s. 812.34 (2) if the amount owed were subject to garnishment, but
8 without respect to the exemption provided in s. 812.34 (2) (b) 2.

9 permitted under s. 812.38 (2);

10 **SECTION 24.** 108.225 (16m) of the statutes is created to read:

11 108.225 (16m) DETERMINATION OF EXEMPTION. For purposes of sub (16) (a),

12 reference in s. 812.34 (2) to garnishment means a levy upon the property of a debtor
13 under this section and service upon the garnishee means service of the levy under
14 sub. (13).

15 **SECTION 25.** 2001 Wisconsin Act 35, section 72 (2) (a) 2. and 3. are repealed.

16 **SECTION 26. Nonstatutory provisions.**

17 (1) Notwithstanding the treatment of sections 20.445 (1) (n) and (ne), 108.16
18 (12) and 108.161 (4) (c) of the statutes by this act, the treasurer of the unemployment
19 reserve fund may transfer moneys from the appropriation account under section
20 20.445 (1) (n) of the statutes, as affected by this act, to the appropriation account
21 under section 20.445 (1) (ne) of the statutes, as created by this act, and may
22 thereafter pay any banking service costs incurred by the fund that are outstanding
23 on the effective date of this subsection from the appropriation under section 20.445
24 (1) (ne) of the statutes, as created by this act, if the treasurer determines that the
25 fund would realize higher net earnings by taking such action.

SECTION 27. Initial applicability.

renumbering
and amendment

(1) The treatment of sections 20.445 (1) (n) and (ne), 108.16 (12) and 108.161 (4) (c) of the statutes first applies with respect to the first calendar quarter beginning after the effective date of this subsection.

(2) The treatment of section 108.04 (2) (a) 3. of the statutes first applies with respect to determinations issued under section 108.09 of the statutes on the effective date of this subsection.

(3) The treatment of section 108.04 (16) (a) (intro.), (b), and (c) of the statutes first applies with respect to weeks of unemployment beginning on the effective date of this subsection.

(4) The treatment of section 108.09 (4) (c) of the statutes first applies with respect to determinations issued under sections 108.09, 108.095, and 108.10 of the statutes on December 29, 2003.

(5) The treatment of sections ^{108.04 (11) (cm)} 108.14 (8s) (a) and (b) and 108.22 (8) (b) of the statutes first applies with respect to determinations issued under section 108.09 of the statutes on the effective date of this subsection.

(6) The treatment of section 108.22 (2) (b) of the statutes first applies with respect to satisfactions, releases, and withdrawals of warrants issued on the effective date of this subsection.

(7) The treatment of sections ^{108.16 (3) (a) and (6m) (e) and (b) and (intro.) (a), (b) and (c) of the statutes} 108.225 (1) (d), (15), (16) (a) and (16m) of the statutes first applies with respect to levies issued on the effective date of this subsection.

SECTION 28. Effective dates. This act takes effect on the first Sunday after publication, except as follows:

(END)

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INS 3A:

provides instead This bill ~~requires that a claimant~~ ^{in order to remain eligible to receive benefits for a week in which a claimant ~~earns~~} ~~conduct a reasonable search for suitable work~~ ^{must} ~~within each week in which the claimant earns no wages for which the claimant~~ ~~claims benefits.~~ ^{no wages, the} The bill also provides that the requirement does not apply to an individual if DWD determines that the individual is currently laid off from work with an employer but there is a reasonable expectation of reemployment of the individual by that employer.

INS 4A:

Treatment of limited liability companies

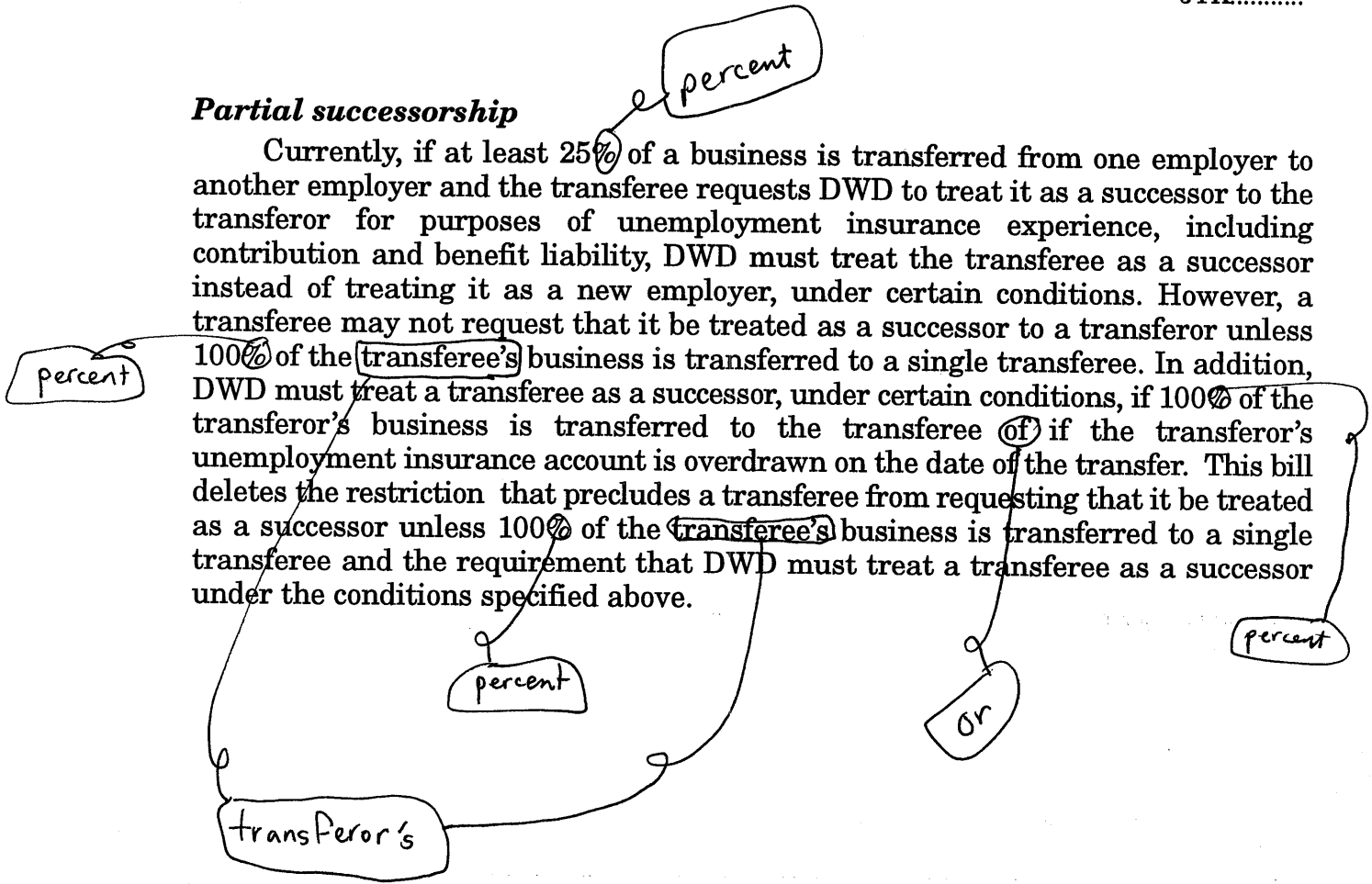
Currently, limited liability companies are generally covered under the unemployment insurance system. Current law does not expressly treat the issue of whether members of a limited liability company are considered to be employees of the company and therefore whether they are eligible to receive benefits. Currently, a corporation may, under certain conditions, elect to exclude its principal officers from unemployment insurance coverage, with the result that the corporation pays no contributions (taxes) based on their services and the officers are not eligible to receive benefits. Currently, if a business has one owner or if a business is organized as a partnership, the owner or partners pay no contributions (taxes) based on their services and they are not eligible to receive benefits.

This bill provides that a limited liability company shall be treated as a corporation for unemployment insurance purposes, including payment of contributions (taxes) and eligibility of its members for benefits if it is so treated for federal unemployment tax purposes, beginning with the date it applies to DWD to be so treated or the date that it becomes so treated by the federal internal revenue service, whichever is later. If a limited liability company does not apply to DWD to be treated as a corporation for unemployment insurance purposes or the corporation ^{company} is not so treated for federal unemployment tax purposes, the company is treated as a partnership if it has more than one member or as a sole proprietorship (business owned by one individual) if it has only one member, except that, under the bill, DWD may in the interests of justice or to prevent fraud upon the unemployment insurance program determine a member of a limited liability company to be an employee of the company. In this case, the services performed by the member are subject to contributions (taxes) and the member potentially qualifies to receive benefits.

INS 4B:

Partial successorship

Currently, if at least 25% of a business is transferred from one employer to another employer and the transferee requests DWD to treat it as a successor to the transferor for purposes of unemployment insurance experience, including contribution and benefit liability, DWD must treat the transferee as a successor instead of treating it as a new employer, under certain conditions. However, a transferee may not request that it be treated as a successor to a transferor unless 100% of the transferee's business is transferred to a single transferee. In addition, DWD must treat a transferee as a successor, under certain conditions, if 100% of the transferor's business is transferred to the transferee or if the transferor's unemployment insurance account is overdrawn on the date of the transfer. This bill deletes the restriction that precludes a transferee from requesting that it be treated as a successor unless 100% of the transferee's business is transferred to a single transferee and the requirement that DWD must treat a transferee as a successor under the conditions specified above.



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INS 6-24:

SECTION 1. 108.02 (12) (a) of the statutes is amended to read:

108.02 (12) (a) "Employee" means any individual who is or has been performing services for an employing unit, in an employment, whether or not the individual is paid directly by such employing unit; except as provided in par. (b), (bm), (c) or (d), (dm) or (dn).

History: 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133; 1979 c. 52, 221; 1981 c. 36, 353; 1983 a. 8 ss. 4 to 12, 54; 1983 a. 168; 1983 a. 189 ss. 158 to 161, 329 (25), (28); 1983 a. 384, 477, 538; 1985 a. 17, 29, 332; 1987 a. 38 ss. 6 to 22, 134; 1987 a. 255; 1989 a. 31; 1989 a. 56 ss. 151, 259; 1989 a. 77, 303; 1991 a. 89; 1993 a. 112, 213, 373, 492; 1995 a. 27 ss. 3777, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 27, 39; 1999 a. 15, 82, 83; 2001 a. 35, 103, 105.

INS 7-16:

SECTION 2. 108.02 (15) (L) of the statutes is amended to read:

108.02 (15) (L) "Employment" includes an individual's service for an employer organized as a corporation or a limited liability company that is treated as a corporation under this chapter in which the individual is a principal officer and has a direct or indirect ownership interest, except as provided in s. 108.025.

History: 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133; 1979 c. 52, 221; 1981 c. 36, 353; 1983 a. 8 ss. 4 to 12, 54; 1983 a. 168; 1983 a. 189 ss. 158 to 161, 329 (25), (28); 1983 a. 384, 477, 538; 1985 a. 17, 29, 332; 1987 a. 38 ss. 6 to 22, 134; 1987 a. 255; 1989 a. 31; 1989 a. 56 ss. 151, 259; 1989 a. 77, 303; 1991 a. 89; 1993 a. 112, 213, 373, 492; 1995 a. 27 ss. 3777, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 27, 39; 1999 a. 15, 82, 83; 2001 a. 35, 103, 105.

SECTION 3. 108.02 (15m) (a) and (b) of the statutes are amended to read:

108.02 (15m) (a) A corporation or a limited liability company that is treated as a corporation under this chapter in which 50% or more of the ownership interest, however designated or evidenced, is or during a claimant's employment was owned or controlled, directly or indirectly, by the claimant or by the claimant's spouse or child, or by the claimant's parent if the claimant is under the age of 18, or by a combination of 2 or more of them; or

History: 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133; 1979 c. 52, 221; 1981 c. 36, 353; 1983 a. 8 ss. 4 to 12, 54; 1983 a. 168; 1983 a. 189 ss. 158 to 161, 329 (25), (28); 1983 a. 384, 477, 538; 1985 a. 17, 29, 332; 1987 a. 38 ss. 6 to 22, 134; 1987 a. 255; 1989 a. 31; 1989 a. 56 ss. 151, 259; 1989 a. 77, 303; 1991 a. 89; 1993 a. 112, 213, 373, 492; 1995 a. 27 ss. 3777, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 27, 39; 1999 a. 15, 82, 83; 2001 a. 35, 103, 105.

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(b) Except where par. (a) applies, a corporation or a limited liability company that is treated as a corporation under this chapter in which 25% or more of ownership interest, however designated or evidenced, is or during a claimant's employment was owned or controlled, directly or indirectly, by the claimant. ✓

History: 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133; 1979 c. 52, 221; 1981 c. 36, 353; 1983 a. 8 ss. 4 to 12, 54; 1983 a. 168; 1983 a. 189 ss. 158 to 161, 329 (25), (28); 1983 a. 384, 477, 538; 1985 a. 17, 29, 332; 1987 a. 38 ss. 6 to 22, 134; 1987 a. 255; 1989 a. 31; 1989 a. 56 ss. 151, 259; 1989 a. 77, 303; 1991 a. 89; 1993 a. 112, 213, 373, 492; 1995 a. 127 ss. 3777, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 27, 39; 1999 a. 15, 82, 83; 2001 a. 35, 103, 105.

SECTION 4. 108.02 (20r) of the statutes is created to read: ✓

108.02 (20r) PARTNERSHIP. "Partnership" has the meaning given in s. 178.03. ✓

SECTION 5. 108.02 (12) (dm) and (dn) of the statutes are created to read: ✓

108.02 (12) (dm) Paragraph (a) does not apply to an individual who owns a business that operates as a sole proprietorship.

(dn) Paragraph (a) does not apply to a partner in a business that operates as a partnership.

SECTION 6. 108.025 (title) and (1) of the statutes are amended to read: ✓

108.025 (title) **Coverage of certain corporate officers and limited liability company members.**

History: 1991 a. 89.

(1) In this section, "principal officer" means an: ✓

(a) An individual named as a principal officer in ~~the~~ a corporation's most recent annual report or, if that information is not current, an individual holding an office described in the corporation's most recent annual report as a principal officer; or

History: 1991 a. 89.

SECTION 7. 108.025 (1) (b) of the statutes is created to read: ✓

108.025 (1) (b) An individual named as a member of a limited liability company that is treated as a corporation under this chapter in the records of the company required to be kept under s. 183.0405 as of the date of an election under this section. ✓

SECTION 8. 108.025 (2) and (6) of the statutes are amended to read:

108.025 (2) If an employer ^{is organized as a corporation or limited liability company that is treated as a corporation under this chapter} ~~having~~ ^{has} no annual payroll for the calendar year preceding an election or ~~an employer having~~ ^{and the employer} an annual payroll of less than the amount specified in s. 108.18 (9) which establishes separate solvency contribution rates for the calendar year preceding an election ^{and the employer} files a notice of election, in the manner prescribed by the department, to exclude the service of all of its principal officers who have a direct or indirect substantial ownership interest in ~~the~~ ^{the} corporation or limited liability company ~~that is treated as a corporation under this chapter~~, employment does not include the service of those officers. ^{plain}

History: 1991 a. 89.

(6) A principal officer has a direct or indirect substantial ownership interest in a corporation or limited liability company that is treated as a corporation under this section if 25% or more of the ownership interest, however designated or evidenced, in the corporation is owned or controlled, directly or indirectly, by the officer.

History: 1991 a. 89.

SECTION 9. 108.04 (1) (gm) 1., 2., 3. and 4. (intro.) of the statutes are amended to read:

108.04 (1) (gm) 1. Dissolution of the family corporation, due to economic inviability, under ch. 180 or the analogous applicable laws of the jurisdiction in which the corporation is incorporated or organized;

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35.

2. Filing for corporate of a petition in bankruptcy by the family corporation;

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35.

3. Filing for personal of a petition in bankruptcy by all owners who are personally liable for any of the debts of the family corporation; or

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35.

108.04 (1) (gm) 4. (intro.) Disposition of a total of 75% or more of the assets of the family corporation using one or more of the following methods:

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35.

SECTION 10. 108.04 (2) (a) 3. of the statutes is renumbered 108.04 (2) (a) 3.

(intro.) and amended to read:

108.04 (2) (a) 3. (intro.) The individual ~~is seeking suitable work during that week or, during the 156 week period beginning on January 2, 2000, the individual~~ conducts a reasonable search for suitable work during that week. The reasonable search ~~required during the period specified in this subdivision~~ for suitable work must include 2 actions that constitute a reasonable search as prescribed by rule of the department. ~~The department shall, by rule, require claimants to conduct a reasonable search for suitable work during the period beginning after the 156 week period specified in this subdivision and shall, by rule, prescribe standards for the search to be considered reasonable.~~ This subdivision does not apply to an individual if the department determines that the individual is currently laid off from employment with an employer but there is a reasonable expectation of reemployment of the individual by that employer. In determining whether the individual has a reasonable expectation of reemployment by an employer, the department shall request the employer to verify the individual's employment status and shall also consider other factors, including:

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35.

SECTION 11. 108.04 (2) (a) 3. a. to c. of the statutes are created to read:

- 108.04 (2) (a) 3. a. The history of layoffs and reemployments by the employer;
- b. Any information that the employer furnished to the individual or the department concerning the individual's anticipated reemployment date; and

c. Whether the individual has recall rights with the employer under the terms of any applicable collective bargaining agreement. ✓

INS 8-6:

✓
SECTION 12. 108.04 (7) (r) of the statutes is amended to read:

108.04 (7) (r) Paragraph (a) does not apply if the department determines that the employee owns or controls, directly or indirectly, an ownership interest, however designated or evidenced, in a family corporation and the employee's employment was terminated by the employer because of an involuntary cessation of the business of the corporation under one or more of the conditions specified in sub. (1) (gm). In this paragraph, "family corporation" has the meaning given in s. 108.02 (15m) and also includes a corporation or a limited liability company that is treated as a corporation under this chapter in which 50% or more of the ownership interest is or was owned or controlled, directly or indirectly, by one or more brothers or sisters of a claimant, or by a combination of one or more brothers or sisters and one or more of the persons specified in s. 108.02 (15m) (a). *remove scoring* ✓

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35.

INS 14-13:

✗
SECTION 13. 108.068 of the statutes is created to read:

108.068 Treatment of limited liability companies and members. (1)

✗ Subject to subs. (3) to ⁷(6), the department shall treat a limited liability company as a partnership under this chapter unless the company elects to be treated as a corporation for contribution and benefit purposes and files proof with the

department that the company has applied to the federal internal revenue service to be treated as a corporation for federal unemployment tax purposes and the internal revenue service has agreed to treat the company as a corporation for such purposes. ✓

* (2) Subject to subs. (3) to ⁷(8), a limited liability company that elects to be treated as a corporation under this chapter may file an election to again be treated as a partnership for contribution and benefit purposes and the department shall thereafter treat the company as a partnership for contribution and benefit purposes if the company files proof with the department that the company has applied to the federal internal revenue service to be treated as a partnership for federal unemployment tax purposes and the internal revenue service has agreed to treat the company as a partnership for such purposes. ✓

(3) The department shall treat a limited liability company that files a valid election under sub. (1) or (2) in accordance with that election beginning on the same date that the federal internal revenue service treats the company in accordance with that election for federal unemployment tax purposes, or on the date that the company files a valid election under sub. (1) or (2), whichever is later. ✓

(4) Subject to subs. (1), (3), and (7), a limited liability company that is treated as a corporation for federal unemployment tax purposes shall be treated as a corporation under this chapter, and each member of the limited liability company shall be treated as a corporate officer for contribution and benefit purposes. ✓

* (5) Subject to ~~subs. (1), (3), and (7)~~ ^{sub. 7}, a limited liability company with at least 2 members that is not treated as a corporation for federal unemployment tax purposes shall be treated as a partnership under this chapter, and the members of the limited liability company shall be treated for contribution and benefit purposes as partners of that partnership.

(6) Subject to ~~subs. (1), (3) and (7)~~^{sub ✓}, a limited liability company with a single member that is not treated as a corporation for federal unemployment tax purposes ✓ shall be treated as a sole proprietorship under this chapter, and the member shall be treated as a sole proprietor for contribution and benefit purposes. ✓

(7) The department may, in the interests of justice or to prevent fraud upon the unemployment insurance program, determine that a member of a limited liability company is an employee of that company. ✓

INS 16-12:

SECTION 14. 108.16 (3) (a) of the statutes is amended to read:

108.16 (3) (a) Any overpayment for which the claimant's liability to reimburse the fund is established under s. 108.22 (8) or any assessment under s. 108.04 (11) (cm) ✓ for which a final determination has been issued under s. 108.09 ✓ upon receipt of certification by the department that reasonable efforts have been made to recover the overpayment or the amount of the assessment and that it the amount due is uncollectible.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 52; 1979 c. 110 s. 60 (13); 1981 c. 36; 1983 a. 8, 99, 368; 1985 a. 17 ss. 39 to 56, 66; 1985 a. 29; 1987 a. 27; 1987 a. 38 ss. 107 to 111, 134; 1987 a. 255; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89, 221; 1993 a. 112, 373, 490, 492; 1995 a. 118, 225; 1997 a. 39; 1999 a. 15, 83; 2001 a. 35.

SECTION 15. 108.16 (6m) (e) of the statutes is amended to read:

108.16 (6m) (e) Any overpayment of benefits or assessment that is written off under sub. (3), unless except, in the case of an overpayment, if it is chargeable to an employer's account under s. 108.04 (13).

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 52; 1979 c. 110 s. 60 (13); 1981 c. 36; 1983 a. 8, 99, 368; 1985 a. 17 ss. 39 to 56, 66; 1985 a. 29; 1987 a. 27; 1987 a. 38 ss. 107 to 111, 134; 1987 a. 255; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89, 221; 1993 a. 112, 373, 490, 492; 1995 a. 118, 225; 1997 a. 39; 1999 a. 15, 83; 2001 a. 35.

SECTION 16. 108.16 (8) (b) (intro.) of the statutes is amended to read:

108.16 (8) (b) (intro.) If the business of any employer is transferred ~~to a single transferee~~, the transferee is deemed a successor for purposes of this chapter if the department determines that all of the following conditions have been satisfied:

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 52; 1979 c. 110 s. 60 (13); 1981 c. 36; 1983 a. 8, 99, 368; 1985 a. 17 ss. 39 to 56, 66; 1985 a. 29; 1987 a. 27; 1987 a. 38 ss. 107 to 111, 134; 1987 a. 255; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89, 221; 1993 a. 112, 373, 490, 492; 1995 a. 118, 225; 1997 a. 39; 1999 a. 15, 83; 2001 a. 35.

INS 17-21:

✓
SECTION 17. 108.16 (8) (b) 2. of the statutes is amended to read:

108.16 (8) (b) 2. The transfer included ~~100%~~ at least 25% of the transferor's total business ~~on as measured by comparing the payroll experience assignable to the~~ the portion of the business transferred with the transferor's total payroll experience for the last 4 completed quarters immediately preceding the date of the transfer.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 52; 1979 c. 110 s. 60 (13); 1981 c. 36; 1983 a. 8, 99, 368; 1985 a. 17 ss. 39 to 56, 66; 1985 a. 29; 1987 a. 27; 1987 a. 38 ss. 107 to 111, 134; 1987 a. 255; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89, 221; 1993 a. 112, 373, 490, 492; 1995 a. 118, 225; 1997 a. 39; 1999 a. 15, 83; 2001 a. 35.

✓
SECTION 18. 108.16 (8) (c) 4. of the statutes is repealed.

✓
SECTION 19. 108.16 (8) (e) 4. of the statutes is repealed.

✓
SECTION 20. 108.16 (8) (f) of the statutes is amended to read:

108.16 (8) (f) The successor shall take over and continue the transferor's account, including its positive or negative balance and all other aspects of its experience under this chapter. ~~If the transfer included less than 100% of the transferor's total assets on the date of the transfer, the department shall allocate the transferor's experience to the successor in proportion to the payroll assignable to the transferred business and the liability of the successor shall be proportioned to the extent of the transferred business. The transferor and the successor shall be jointly and severally liable for any amounts owed by the transferor to the fund and to the~~

administrative account at the time of the transfer, but a successor under par. (c) is not liable for the debts of the transferor except in the case of fraud or malfeasance.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 52; 1979 c. 110 s. 60 (13); 1981 c. 36; 1983 a. 8, 99, 368; 1985 a. 17 ss. 39 to 56, 66; 1985 a. 29; 1987 a. 27; 1987 a. 38 ss. 107 to 111, 134; 1987 a. 255; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89, 221; 1993 a. 112, 373, 490, 492; 1995 a. 118, 225; 1997 a. 39; 1999 a. 15, 83; 2001 a. 35.

INS 17-21:

✓
SECTION 21. 108.225 (1) (b) of the statutes is amended to read:

108.225 (1) (b) "Debt" means a delinquent contribution or repayment of a benefit overpayment, an assessment under s. 108.04 (11) ^(CM) ~~(15)~~, or any liability of a 3rd party for failure to surrender to the department property or rights to property subject to levy after proceedings under sub. (4) (b) and s. 108.10 to determine that liability. ←

History: 1989 a. 77; 1997 a. 187, 283; 2001 a. 35, 109.

INS 18-8:

✓
SECTION 22. 108.225 (16) (b) of the statutes is renumbered 108.225 (16) (a) 2.

✓
SECTION 23. 108.225 (16) (bm) of the statutes is created to read:

108.225 (16) (bm) No exemptions from levy apply under this subsection if a final determination has been issued under s. 108.09 or a judgment has been entered under s. 108.24 (1) in which the debtor has been found guilty of making a false statement or representation to obtain benefits and the benefits and any assessment under s. 108.04 (11) (cm) have not been reimbursed or paid at the time that the levy is issued, unless the fund's treasurer has written off the debt under s. 108.16 (3) (a). ✓

✓
SECTION 24. 108.225 (16) (c) of the statutes is renumbered 108.225 (16) (a) 3. and amended to read:

108.225 (16) (a) 3. In the case of earnings for a period other than a week, a subsistence allowance computed so that it is equivalent to that provided in par. (b)

✓
subd. 2. using a multiple of the federal minimum hourly wage prescribed by rule of the department.

History: 1989 a. 77; 1997 a. 187, 283; 2001 a. 35, 109.

✓
SECTION 25. 108.225 (16) (cm) of the statutes is created to read:

108.225 (16) (cm)

INS 19-15:

use autonumber
(#) The treatment of section 108.16 (8) (b) (intro.) and 2., (c) 4., (e) 4., and (f) of the statutes first applies with respect to partial transfers of businesses occurring after December 31, 2003, and to transfers of businesses of which the department of workforce development receives notice after January 31, 2004.

NON
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APP

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

October 18, 2003

LRB-3121/P5dn

JTK:.....

9
y's

Tom Smith:

1. This draft includes the latest version of all items that I have as of the above date except the EnAble's Funding proposal and the revision to the Approved Training item. I am continuing to work on these two items together with other work, but I thought it would be most expeditious to get out this draft now so you can begin your review because there is much new material in this draft and there is a possibility I could get interrupted before I am able to finish the last ^{two} items.

2. Concerning the collection of administrative assessments under s. 108.04 (11) (cm), which I addressed in my drafter's note to the /P1 version of this draft, upon further reflection, I think it is necessary to amend ss. 108.22 (8) (b) and 108.225 (1) (b), stats. to account for collection of administrative assessments as well as benefit overpayments. This draft therefore accomplishes that.

→ 3. Concerning the treatment of s. 108.04 (1) (g), stats., relating to benefit reduction resulting from employment by a family business, the draft does not treat s. 108.04 (1) (g) 2. and 3., stats., relating to corporations, to treat limited liability companies in the same manner as corporations because s. 108.04 (1) (g) 1L., stats., already deals with limited liability companies. This, however, raises an issue as to whether s. 108.04 (1) (g) 2. and 3., stats., need to be treated to *exclude* limited liability companies that are treated as corporations. Please let me know if you still think that anything further needs to be treated with respect to this item.

→ 4. In proposed s. 108.04 (2) (a) 3. a., concerning the exception to the requirement to search for suitable work, if you mean to consider the ^{delete} history of layoffs and reemployments ^{xfrs space} of the individual by the employer, the draft needs to be changed.

→ 5. Concerning proposed s. 108.068, relating to treatment of limited liability companies, this draft provides that a company that wishes to be treated as a corporation for contribution and benefit purposes must supply proof not only that it has applied to the internal revenue service to be so treated but that the internal revenue service has agreed to so treat the company. The draft also provides that a limited liability company that elects to be treated as a corporation for contribution and benefit purposes may thereafter reelect to be treated as a partnership for those purposes if it files with the department proof that that internal revenue service has agreed to treat the company

as a partnership for federal unemployment tax purposes. Also, in accordance with our phone conversation of October 14, the draft provides ^{that} an election begins on the effective date of a corresponding election with the internal revenue service unless the company files an election with the department after the effective date of the federal treatment, in which case the state treatment begins on the date that the company files a valid election with the department. Please let me know if any of these provisions is inconsistent with your intent.

6. With respect to proposed s. 108.068 and related provisions (treatment of limited liability companies), no initial applicability provision is included in this draft. Please let me know if you determine that there is a need to include one.

7. Concerning the treatment of s. 108.225 (16) (a), stats., relating to exemption of wages from levies, this draft removes the exemption provided in s. ⁸¹²814.34 (2) (b) 2., stats., which exempts all of a debtor's earnings if the debtor receives, recently received, or is eligible to receive need-based public assistance. The draft also provides in proposed s. 108.225 (16) (bm) that no exemptions to a levy apply if there has been an adjudication of fraud against the debtor, unless the fund's treasurer has written off the debt at the time that the levy is issued. [See also the treatment of s. 108.16 (3) (a) and (6m) (e), stats., which fills in a gap in the law by authorizing writeoffs of uncollectible assessments.] With these changes, I think the draft conforms to your intent. As I mentioned earlier, if you would like, we can build all of the operative language into s. 108.225, stats., without the use of any cross references. If we do this, you should decide whether the definitions in s. 812.30, stats., should continue to apply.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3121/P5dn

JTK:cjs:pg

October 21, 2003

Tom Smith:

1. This draft includes the latest version of all items that I have as of the above date except the EnAble's Funding proposal and the revision to the Approved Training item. I am continuing to work on these two items together with other work, but I thought it would be most expeditious to get out this draft now so you can begin your review because there is much new material in this draft and there is a possibility I could get interrupted before I am able to finish the last two items.
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as a partnership for federal unemployment tax purposes. Also, in accordance with our phone conversation of October 14, the draft provides that an election begins on the effective date of a corresponding election with the Internal Revenue Service unless the company files an election with the department after the effective date of the federal treatment, in which case the state treatment begins on the date that the company files a valid election with the department. Please let me know if any of these provisions is inconsistent with your intent.

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Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

Kuesel, Jeffery

From: Smith, Thomas E - DWD UI
Sent: Tuesday, October 14, 2003 1:57 PM
To: Kuesel, Jeffery
Subject: Approved Training and EnAbles Funding Proposals

Jeff - Attached are the above proposals. The Approved Training was supplied to us without an analysis but for your reference this language covers dept. proposals 22a and 22b. Because I have not been able to speak with our benefits staff or with Dick Tillema on this one, I can't say it is truly "Final", as the document name states, but Greg and I do believe that it covers most of what the Council agreed to.

The Enables analysis has been reviewed by Dick Tillema and this draft does include his most recent changes.



Final Approved Training Language...



Enables law change proposal.doc...

Date: October 14, 2003
 Proposed by: BOLA
 Prepared by: Marissa L. Santiago

Analysis of Proposed UI Law Change Funding for EnABLES

1. Description of the Proposed Change:

Amend the titles in the Chapter 20 schedule, Wis. Stats. § 20.005(3), and § 20.445(1)(gg), identify in session law the amounts appropriated for the EnABLES project, and amend Wis. Stat. § 20.445(1)(nb), §§ 108.161(4)(c) and (8), and § 108.19(1e)(a) to provide funding for the EnABLES project.

2. Proposed Statutory Language:

The titles in the Chapter 20 schedule, Figure § 20.005, are amended to read:

§ 20.445(1)(gg)(title) Unemployment ~~tax and accounting system~~; information technology systems; interest and penalties

§ 20.445(1)(gh)(title) Unemployment ~~tax and accounting system~~; information technology systems; assessments

§ 20.445(1)(nb)(title) Unemployment ~~tax and accounting system~~; information technology systems; federal moneys

Appropriation Changes (session law).

(1) In the schedule under § 20.005(3) of the statutes for the appropriation to the department of workforce development under § 20.445(1)(gg) of the statutes, as affected by the acts of 2003, the dollar amount is increased to \$430,200 for fiscal years 2003-2004 and 2004-2005 to authorize the use of interest and penalty funding for the EnABLES project.

(2) In the schedule under § 20.005(3) of the statutes for the appropriation to the department of workforce development under § 20.445(1)(nb) of the statutes, as affected by the acts of 2003, the dollar amount is increased to \$2.5 million for fiscal years 2003-2004 and 2004-2005 to authorize the use of funds transferred to the state on March 13, 2002, pursuant to s. 903(d) of the Federal Social Security Act, for the EnABLES project.

Wis. Stat. § 20.445(1)(gg) is amended to read:

§ 20.445(1)(gg)(title) Unemployment ~~tax and accounting system~~; information technology systems; interest and penalties. From the moneys received as interest

and penalties collected under ss. 108.04 (11) (c) and (cm) and (13) (c) and 108.22, as a continuing appropriation, the amounts in the schedule for the purpose specified in s. 108.19 (1e).

Wis. Stat. § 20.445(1)(nb) is amended to read:

§ 20.445(1)(nb) Unemployment information technology systems; federal moneys. As a continuing appropriation, the amounts in the schedule, as authorized by the governor under s. 16.54, for the purpose specified in s. 108.19 (1e). All moneys transferred from par. (n), including moneys transferred to the state on March 13, 2002, pursuant to s. 903(d) of the Federal Social Security Act, for this purpose shall be credited to this appropriation account. Notwithstanding s. 20.001 (3) (a), the treasurer of the unemployment reserve fund shall transfer any unencumbered balance in this appropriation account that is not needed or available to carry out the purpose of this appropriation to the appropriation account under par. (n). No moneys may be expended from this appropriation unless the treasurer of the unemployment reserve fund determines that such expenditure is currently needed for the purpose specified in s. 108.19 (1e).

§ 108.161(4)(c) is amended to read:

§ 108.161(4)(c) Specifying that the appropriated amounts are available for obligation solely within the 2 years beginning on the appropriation law's date of enactment. This paragraph does not apply to the appropriations under s. 20.445(1)(nd) or to amounts appropriated to s. 20.445(1)(nb) from moneys transferred to the state on March 13, 2002, pursuant to s. 903(d) of the Federal Social Security Act.

§ 108.161(8) is amended to read:

§ 108.161(8) If any sums are appropriated and spent hereunder to buy land and to build a suitable employment security building thereon, or to purchase hardware and software, then any federal moneys thereafter credited to the fund or paid to the department by way of gradual reimbursement of such employment security capital expenditures, or in lieu of the estimated periodic amounts which would otherwise (in the absence of such expenditures) be federally granted for the rental of substantially equivalent quarters, shall be credited to the account created by sub. (1), consistently with any federal requirements applicable to the handling and crediting of such moneys.

§ 108.19(1e)(a) is amended to read:

§ 108.19(1e)(a) Except as provided in par. (b), each employer, other than an employer that finances benefits by reimbursement in lieu of contributions under s. 108.15, 108.151, or 108.152 shall, in addition to other contributions payable under s. 108.18 and this section, pay an assessment to the administrative account

for each year prior to the year ~~2004~~ 2006 equal to the lesser of 0.01% of its payroll for that year or the solvency contribution that would otherwise be payable by the employer under s. 108.18 (9) for that year.

3. Proposer's Reason for the Change:

a. Description of the Problem:

The current computer system for Benefit Operations and Legal Affairs is expensive to maintain, difficult to change, and based on obsolete technology that will not be supported beyond 2004. It is not as efficient as it was when it was first implemented and is not easily accessible to employers or employees. Navigation between the benefits and appeals systems, which have been programmed separately, is very cumbersome. In addition, the displays and the numerous abbreviations implemented to save space can be confusing to IT professionals that maintain system.

b. Other Alternatives

- Keep the old IDMS system in place, update the benefit and legal tracking system

If only the system was updated, it would still be very expensive (\$17 million). Although this alternative would still give us access to a new benefit and legal system, it would be based on outdated mainframe programs.

- Do nothing—keep the old system

The old system is expensive to maintain, difficult to change, and based on obsolete technology, so it could be more expensive to replace it in the future.

4. Brief History and Background of the Current Provision:

Amendments are being made to various statutory sections that have been used for automation projects to update the tax system. The amendments will permit expenditures for updating computer systems used in processing benefit claims and appeals.

This project will use federal funds to help pay the costs of designing and implementing it. Some of the federal funds used for the project may be replaced by future federal grants or interest and penalties charged to delinquent employers and claimants. If replaced, the funds could be used for future technology projects or redeposited in the federal trust fund for payment of benefits.

5. Effects of the Proposed Change:

a. Policy:

This change will not increase or decrease the amount of benefits an individual can receive. Rather, the change will fund a major redesign of computer systems used to administer the UI program efficiently and enhance the way it operates in the future.

b. Administrative Impact:

1. Employers: The new technology will give employers 24-7 access to their tax records, permit quicker collection of data, and allow employers to enter information needed for processing their tax payments. It will lead to more consistency and will allow employers to manage more issues or cases.
2. Claimants: The new program will allow claimants the same capabilities in filing their claims and will lead to faster, better decisions. Like employers, they will be able to access their unemployment records themselves and will be able to enter their data more quickly.
3. Department: This program will facilitate case management and customer relationship management. The new appeals and benefit systems will make overall case handling more efficient. With the new technology, IT professionals will be able to make simple changes to the system more quickly and easily without requiring expensive programmer time. This will allow IT professionals to focus more time on maintaining the program because they will not be constrained by the technological limits.

c. Equitable: To be determined

d. Fiscal: To be determined

6. State and Federal Issues:

This update will allow the State of Wisconsin to increase its workload and productivity requirements as mandated by federal law. With this increase, the State of Wisconsin will continue to receive federal funding for the UI program.

Changing the aforementioned statutes will not interfere with any other provisions of Wisconsin law, nor are there any federal conformity issues.

7. Proposed Effective/Applicability Date:

This change will take effect on January 1, 2004.

Enables

- ✓ check appearance
as needed by fund's treasurer
- ✓ set up bank service charges in same way (Reed Act)
- ✓ - give notice by 60 days after publication
- ✓ - 108.19 (1e)(d) strike including tax & rate system
- ✓ - ~~2004~~ 2008

Date: September 9, 2003
Proposed by: Administration
Prepared by: Melissa Montey
Proposal #2

ANALYSIS OF PROPOSED LAW CHANGE

1. Description of Proposed Change

This proposal makes several changes to the approved training provision under §108.04(16) and significantly reorganizes this statute. The new language will:

- Specify when suspensions under §108.04(1) and (2) do not apply to an individual who is enrolled in approved training;
- Expand the approved training programs for which additional protection is provided to include state-approved programs administered by the Department and job-readiness training;
- Clarify that the entire requalification requirement under §108.04(7) and (8) is not applied when the individual is enrolled in specific types of approved training;
- Include provisions to delay and temporarily lift suspensions while an individual is enrolled in approved training; and
- Provide additional relief of charges for employers.

2. Proposed Statutory Language

- Change §108.04(16)(a), (b) and (c) as shown on attachment.
- Remove reference to ss. 108.04(16) in §108.04(7)(h).

3. Proposer's Reason for the Change

The language of §108.04(16) and the language in the provisions specified in §108.04(16) have been modified in recent years and these changes have the potential to result in interpretations that are contrary to its original intent. The proposed changes would prevent these misinterpretations.

A non-charge was also added as a matter of equity to those situations where employment is temporarily or permanently severed due to the approved training. The law currently provides for a noncharge only when the individual quits unsuitable work to enter or continue TAA or Dislocated Worker training.

It was necessary to rewrite and reorganize §108.04(16) to incorporate applications required by a 1994 Court of Appeals case that have been in place since 1996. These applications include delaying and temporarily removing suspensions that are not the result of the claimant's enrollment and providing identical protection for individuals enrolled in TAA and Dislocated Worker training.

The types of training that can be approved was expanded to include job-readiness training. The intent of this provision is to allow an unemployed worker the opportunity to attend training that will increase his opportunities to return to the labor force within a short period of time. Job-readiness training meets this intent and will return the individual to the labor force more quickly than someone who is enrolled in a two-year technical course, which is currently

approved. However, attending school to obtain a GED would still not be approved training unless it is a prerequisite to other approved training.

The types of training that will always be considered approved was also expanded to include State-approved programs administered by the Department for training unemployed workers, rather than limiting this automatic approval to TAA and Dislocated Worker training. The Department administers a variety of state-approved training programs that are used to help unemployed workers return to meaningful work. In this capacity the Department assess the training need, creates employability plans, and often suggests and sometimes requires training participation. It seems illogical that another Division within the same Department would disqualify these individuals from receiving UI benefits as a result of this training.

4. Brief History and Background of Current Provisions

As a matter of federal conformity protection must be given to workers who are enrolled in an approved course of study.

§108.04(16)(a) & (b) prevent the denial of benefits under subsection (2), which prior to 1987, only included a protection under the able and available, work search and work registration provisions. When subsections (e) & (f) were added to §108.04(2), it was not intended to allow a person in approved training to be relieved of the disqualification under those subsections for failing to provide the department with a social security number or knowingly supplying a false social security number. So the language in §108.04(16)(a) & (b) was changed to specify that protection is provided only under subsections (a)–(d) of §108.04(2).

The original language of §108.04(16)(c)4, previously §108.04(16)(b), said that “the requalifying *employment* requirement under subs. (7) and (8) do not apply...”. At the time of its writing, the entire requalification requirement under subs. (7) and (8) was based on subsequent employment. When the requalification requirement of subsections (7) and (8) was modified in 1989 to require elapsed weeks rather than weeks of work, the approved training statute was not updated accordingly. Clearly the intent was that the claimant be relieved of the entire requalification requirement, so the word “employment” was removed.

Likewise when “a plan approved under 29 USC 2822” was added in the last bill cycle to §108.04(16)(c), previously §108.04(16)(b), we failed to specify that this referred only to plans for dislocated workers. 29 USC 2822 also includes training plans for youth and adult workers who are not “dislocated,” and it was not our intent to provide protection for individuals approved for funding under those plans. So the language was changed to specify that this subsection was referring to “a plan for *dislocated workers* under 29 USC 2822.”

§108.04(16)(c) was also rewritten to clarify that the protection in subsection (a) applies to persons enrolled in TAA training as well as to dislocated workers even if they fail to meet the requirements specified in par. (a) 1. to 4.

5. Effect of the Proposed Change

Policy

The relief of charges for employers under §108.04(16)(e) will have little impact on department policy. However, the new criteria for determining that the training is approved and the expansion of approved training programs will significantly change current policy.

Administrative Feasibility

The addition of §108.04(16)(e) will not impact workload. The expansion of approved training programs will impact workload as some investigations may take longer, but overall will reduce workload as we will consider the nature of the training rather than enrollment than verifying the transferability of credits. Training is required and an Unemployment Insurance Directive will be needed. Additional resolution codes and lid formats may be added, but no additional programming should be required.

Equitable

As stated in the proposer's reason for the change, the proposed changes make this provision more equitable by increasing the relief of charges for employers in §108.04(16)(e).

However, automatically considering all State-approved programs administered by the department as approved training may increase the number of individuals eligible for benefits for which the employer would not be charged for benefits.

6. Fiscal

A fiscal report is necessary for §108.04(16)(e) and the expansion of approved training programs and is to be provided by BOLA.

7. State and Federal Issues

There are no State conformity issues, but we are reviewing Federal TAA regulations to determine if there are any Federal conformity issues.

8. Proposed Effect/Applicability Date

Applies to weeks beginning with the first Sunday after publication.

Final Approved Training Language

§108.04(16) APPROVED TRAINING. (a) Benefits shall not be reduced under subs. (1)(a) or denied under subs. (2)(a)-(d) or (8) or s. 108.141(3g) to any otherwise eligible individual for any week as a result of the individual's enrollment in a course of vocational training, or basic education which is a prerequisite to such training, that meets the following conditions. Vocational training includes technical, skill-based or job readiness training intended to pursue a career.

1. The course is expected to increase the individual's opportunities to obtain employment; and
 2. The training is given by a school established under s. 38.02 or other training institution approved by the department; and
 3. The individual is enrolled full-time as determined by the institution; and
 4. The course does not grant substantial credit leading to a bachelor's or higher degree; and
 5. The individual is attending regularly and making satisfactory progress in the course. The department may require the training institution to file a certification showing the individual's attendance and progress.
- (b) Benefit disqualifications under subs. (2)(a)-(d), (7)(c), (8)(e) or 108.141(3g), and benefit disqualifications under sub. (1)(b)1 that are not a result of the training, shall not be imposed while the individual is enrolled in a course of vocational training, or basic education which is a prerequisite to such training, that meets the conditions under sub. (a) 1. - 4.
- (c) With regard to an individual who is enrolled in a state-approved program administered by the Department for training unemployed workers in existence as of 10/01/03, with the exception of training under the Youth Apprenticeship Program and training for youth under 29, USC 2822, notwithstanding the failure of such training to meet any of the requirements under par. (a) 1. to 4.:
1. Benefits shall not be reduced under subs. (1)(a) or denied under subs. (2)(a)-(d), (8) or 108.141(3g) to an otherwise eligible individual as a result of the individual's enrollment in such training; and
 2. Benefit disqualifications under subs. (2)(a)-(d), (7)(c), (8)(e) or 108.141(3g), and benefit disqualifications under sub. (1)(b)1 that are not a result of the training, shall not be imposed while the individual is enrolled in such training.
- (d) With regard to an individual who is enrolled in training under 19 USC 2296 or a plan approved under 29 USC 2822 for dislocated workers:
1. Benefits shall not be denied under sub. (7) as a result of the individual's leaving unsuitable work to enter or continue such training; and
 2. The requalifying requirement under subs. (7) and (8) shall not be imposed while the individual is enrolled in such training.
- (e) The department shall charge to the fund's balancing account benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18 if ss. 108.04(16)(b), (c)(2), or (d) apply.